

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

PETER WILLIAM HARPER,

Petitioner,

vs.

WARDEN LAUGHLIN; MONTANA
FIRST JUDICIAL DISTRICT
COURT,

Respondents.

CV 14-59-GF-DLC

ORDER

FILED

SEP 22 2014

Clerk, U.S. District Court
District Of Montana
Missoula

United States Magistrate Judge R. Keith Strong entered Findings and Recommendations on August 26, 2014 recommending that Harper's petition for writ of habeus corpus be dismissed and a certificate of appealability be denied. Petitioner did not timely object to the Findings and Recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

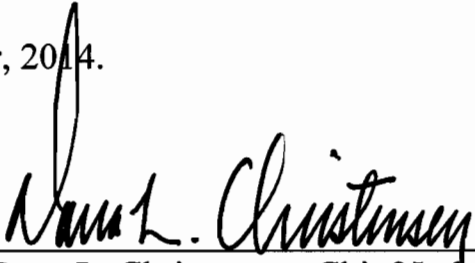
There is no clear error in Judge Strong's Findings and Recommendations and the Court adopts them in full.

On July 29, 2014 the Montana Supreme Court granted Harper a writ of habeas corpus and subsequently remanded the case to the First Judicial District Court, Lewis and Clark County, for resentencing. Harper now asks this Court to order his immediate release. The Montana Supreme Court neither re-calculated Harper's sentence nor ordered his immediate release. There is no clear error in Judge Strong's finding that this Court generally does not consider claims before they are properly exhausted in the Montana State courts. *See Rose v. Lundy*, 455 U.S. 509, 520 (1982). Harper has not yet exhausted his claim that he is being held beyond the termination of his sentence in the courts of the State of Montana. This claim is dismissed on appropriate procedural grounds, therefore there is no clear error in Judge Strong's finding that denial of a certificate of appeal is warranted.

Accordingly, IT IS ORDERED that Judge Strong's Findings and Recommendations (doc. 4) are ADOPTED in full.

IT IS FURTHER ORDERED that Petitioners's Petition for Writ of Habeas Corpus (doc. 1) is DISMISSED. A certificate of appealability is DENIED.

Dated this 22nd day of September, 2014.



Dana L. Christensen, Chief Judge
United States District Court